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DESIGNATING CERTAIN PUBLIC LANDS IN THE STATE OF MICHIGAN AS WILDERNESS, AND FOR OTHER PURPOSES

OCTOBER 22 (legislative day, OCTOBER 16), 1987.—Ordered to be printed

Mr. LEAHY, from the Committee on Agriculture, Nutrition, and Forestry, submitted the following

REPORT

[To accompany H.R. 148]

The Committee on Agriculture, Nutrition, and Forestry, to which was referred the bill (H.R. 148) to designate certain public lands in the State of Michigan as wilderness, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

PURPOSE AND NEED

H.R. 148, the Michigan Wilderness Act of 1987, as reported by the Committee on Agriculture, Nutrition, and Forestry, would add nine areas of National Forest land in Michigan, totaling approximately 79,249 acres, to the National Wilderness Preservation System. The bill also would ensure that national forest lands in Michigan not designated as wilderness are released for such uses as are determined appropriate through the national forest land management planning process.

H.R. 148 reflects the Committee's consideration of the RARE II and other longstanding proposals for the designation of national forest wilderness areas in the State of Michigan. As such, H.R. 148 would designate the first national forest wilderness areas in the State of Michigan.

THE WILDERNESS AREAS

H.R. 148 designates the following areas as wilderness:

Nordhouse Dunes Wilderness.—Forest Service's land management plan for the Manistee National Forest recommended this

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3,395 acre area for wilderness study. The proposed wilderness is the only area in H.R. 148 located in Michigan's lower peninsula, and comprises one of the last remaining stretches of undeveloped land on Lake Michigan's eastern shoreline. The nearly 4-mile shoreline of dunes rises strikingly before fading into grass-covered areas and oak, pine and hardwood forests deeper inland. A small inland pond (Nordhouse Lake) lies in the center of the area.

Nordhouse Dunes is especially significant because of its roadless and undeveloped nature. As such, it presents outstanding opportunities for scientific studies and educational outings. In addition, being the only area in this bill on the lower peninsula, Nordhouse Dunes also represents the closest potential wilderness experience for Michigan's largest communities—Detroit, Muskegon, Grand Rapids, Kalamazoo and Lansing. Primitive recreation demand is increasing in Michigan, and many lower peninsula residents are keenly interested in seeing the area designated as wilderness.

Sylvania Wilderness.—Recommended for wilderness by the Forest Service in RARE II, this remote 18,327 acre area in the Ottawa National Forest straddles the Lake Superior-Mississippi River divide and features over two dozen major lakes, many of which are connected by canoe portage trails. The area contains several nesting pairs of bald eagles, and two known Michigan listed threatened plant species. It also has superb hunting, and fishing for large and small mouth bass, lake trout, walleye, northern pike, and numerous panfish. Good hiking trails traverse the area and lead to dozens of wilderness type campsites.

Sturgeon River Gorge Wilderness.—Recommended for wilderness by the Forest Service in RARE II, this area of about 14,139 acres in the Ottawa National Forest is dominated by the 200-foot Sturgeon Falls and the spectacular Sturgeon River Gorge. The Sturgeon River itself is listed in a nationwide rivers inventory for its potential for inclusion as a National Wild and Scenic River. Panoramic overviews of the gorge can be had at several points along the eastern escarpment, and the wilderness boundary has been drawn at the edge of the escarpment in several places in order to allow continued motorized access for viewing purposes.

In addition, the area is generally representative of the wildlife populations of Michigan's upper peninsula, and provides excellent habitat for bald eagle, bobcat, black bear, otter, muskrat, ruffed grouse and woodcock, among other species. Hunting and fishing opportunities abound.

Rock River Canyon Wilderness.—This 4,640 acre area in the Hiawatha National Forest consists of two separate river gorges split by a central plateau. The canyon areas of Rock River and Silver Creek are highly scenic, provide outstanding solitude, and contain fragile areas of unusual plant communities. During the winter months, ice curtains blanket several of the grottos to form ice caves, which are a popular destination.

Mandated for wilderness study by Congress in 1975 and recommended for wilderness in the land management plan, this area also contains several significant stands of big trees and an 80 acre tract that has been proposed as a Research Natural Area in order to protect its superlative botanical features.

Big Island Lake Wilderness.—Forest Service management plan for the Hiawatha Forest recommended wilderness study designation for this 5,500 acre area. The area is dotted with a chain of small lakes and connecting canoe portage trails. The 23 lakes in the area are interspersed with low lying hills dominated by white birch, maple and aspen forests—all of which provide beautiful scenery and opportunities for primitive recreation.

Like the nearby Rock River Canyon area, Big Island Lake is relatively small in size, but its wilderness significance is enhanced by the fact that it is one of the few areas in the state that is relatively close to population centers yet still retains an undeveloped character and outstanding recreational potential.

Mackinac Wilderness.—Recommended for wilderness by the Forest Service in RARE II, this 12,230 acre area in the Hiawatha National Forest is bisected by the scenic Carp River, which provides challenging canoeing and excellent fishing. In addition, the area has a multitude of ecosystems—from forested lands and low ridges to the north, to bogs, wetlands, beaver ponds and meadows in the south—and contains a good network of hiking trails north of the river.

Horseshoe Bay Wilderness.—This 3,790 acre area in the Hiawatha National Forest includes about 7 miles of undeveloped shoreline on Lake Huron, one of the last undeveloped stretches of lakefront on the U.S. side of the Lake. The area thus provides increasingly demanded opportunities for lakeside primitive recreation, such as hiking and overnight camping. Numerous species of wildflowers, pitcher plants, wild roses and bird's eye primrose adorn the shoreline. The area was recommended for wilderness by the Forest Service in RARE II.

Round Island Wilderness.—Recommended for wilderness by the Forest Service in RARE II, this 378 acre island in the Hiawatha National Forest provides spectacular views of Mackinac Island, Bois Blanc Island, and Lake Huron. Recreational use of the island is high, because of both its picturesque and rugged nature, and because of its relative seclusion.

The historic Round Island Lighthouse, which is on the National Register of Historic Places, lies on a spit at the northwest corner of the island. Because of the current high lake level, the lighthouse is actually separated by shallow water from the island. The lighthouse would be excluded from the wilderness, with the wilderness boundary running through the lowest point of the connecting spit.

McCormick Wilderness.—This 16,850 acre area in the Ottawa National Forest was recommended for wilderness study designation in the forest's land management plan. Major attractions include 18 lakes, waterfalls on the Yellow Dog River, and the overall isolated and unspoiled character of the mature forest. The area is becoming increasingly popular for primitive recreation, particularly for cross-country skiing in the winter, and is valuable habitat for black bear, coyote, moose, and numerous other wildlife species. In addition, the area is currently administratively designated as an Experimental Forest, and provides outstanding opportunities for scientific research.

MANAGEMENT OF THE AREAS

As Section 5 of the bill provides, management of the areas which H.R. 148 designates as wilderness will be guided by requirements of the Wilderness Act of 1964. In its consideration of H.R. 148, S.1036, and S.1767 in the 99th Congress, the Committee reviewed a number of particular points related to management of the individual areas, as follows:

1. *Nordhouse Dunes Wilderness.*—While the Forest Service, in testimony before the Committee, acknowledged that it had recommended wilderness study for the Nordhouse Dunes area in the Manistee National Forest's land management plan, the agency objected to designation of the Nordhouse Dunes area as wilderness. The stated basis for the agency's objection is the high potential for the occurence of natural gas underlying the area, and the possible need for acquisition of private mineral rights underlying the area. About two-thirds of the subsurface mineral rights in the area are privately owned, with the remainder approximately evenly divided between State and Federal ownership. The 684 acres of Federal mineral rights are currently under lease.

The Committee acknowledges that there are potential costs and difficulties associated with managing valid existing subsurface mineral rights underlying wilderness areas. However, neither the existence of privately held mineral rights nor the potential for their development should serve to disqualify the Nordhouse Dunes area from inclusion in the National Wilderness Preservation System.

The Committee notes that the Wilderness Act provides for, and section 5 of H.R. 148 reaffirms, the protection of valid existing rights. The Committee also notes, however, the action taken by the State of Michigan earlier this year. In April, the Michigan Department of Natural Resources found that oil and gas development within the Nordhouse Dunes area would be environmentally incompatible with the natural features of the area and in violation of the Michigan Environmental Protection Act, and would therefore not be permitted. Given the State's action, federal acquisition of the subsurface mineral rights would appear unnecessary.

2. *Sylvania Wilderness.*—In designating this area as wilderness, the Committee is aware that motorboats are currently used for fishing and other purposes on Big Bateau, Devils Head and Crooked Lakes. In accordance with section 4(d)(1) of the Wilderness Act, the Committee believes that pre-existing motorboat use on these lakes may be permitted to continue, insofar as this use does not conflict with or adversely affect wilderness values.

3. *Sturgeon River Gorge Wilderness.*—The Committee understands that nearly 1,900 acres of this area are owned by a private utility company. The Committee believes that federal ownership of this area would be desirable, and urges the Forest Service to work with the utility to facilitate an exchange for this inholding.

4. *Big Island Lake Wilderness.*—The boundary drawn by the Committee includes the Byers uake inholding. The Committee intends that access to this inholding will continue via the dirt road within the wilderness boundary, but that this road be closed to vehicle access by the general public. The Committee also encourages

the Forest Service to pursue acquisition or exchange of this inholding on a willing seller basis.

RELEASE/SUFFICIENCY LANGUAGE

Section 6 of H.R. 148 contains the standard "release/sufficiency" language which has been incorporated by the Congress in virtually all national forest wilderness bills enacted over the past several years. This language statutorily confirms the April 1979 administrative "release" of certain RARE II non-wilderness recommended lands and releases other lands not designated as wilderness by H.R. 148.

The question of "release" arises from the interest in the future management of areas reviewed during the RARE II process. At issue is the point at which those lands not designated as wilderness or wilderness study by this Act, but reviewed in the RARE II process, can again be considered for possible recommendation to the Congress for designation as wilderness, and how those lands will be managed.

The "sufficiency" aspect of this question arose as a result of a decision in Federal District Court in California. Soon after the completion of RARE II, the State of California brought suit against the Secretary of Agriculture, challenging the legal and factual sufficiency of the RARE II Final Environmental Impact Statement concerning its consideration of wilderness in some 46 areas in the State of California.

In January 1980, Judge Lawrence Karlton of the United States District Court for the Eastern District of California, in California v. Bergland (448 F. Supp. 465), held that the RARE II Final Environmental Impact Statement had insufficiently considered the wilderness alternative for the specific areas challenged. Judge Karlton enjoined any development which would "change the wilderness character" of these areas until a subsequent consideration of the wilderness values in accordance with the National Environmental Policy Act could be completed by the Department of Agriculture. The Ninth Circuit Court of Appeals affirmed the District Court opinion in California v. Block (690 F.2d 653) in 1982.

While the decision applied specifically to only 46 roadless areas in California, the decision created confusion over development of non-wilderness areas in states other than those within the 9th Circuit. As a result, early in 1983 the Forest Service announced that all roadless areas studied for wilderness potential during RARE II would be subject to re-evaluation.

In recognition of the problems presented by the court decision, Congress subsequently developed "release/sufficiency" language for use in wilderness bills. The language included in H.R. 148 is the language developed by the Congress during the second session of the 98th Congress.

The language in H.R. 148 tracks the regulations promulgated by the Forest Service under the National Forest Management Act. Those regulations provide that an authorized land management plan shall ordinarily be revised on a 10-year cycle or at least every 15 years. The language provides that the Forest Service is not required to review the wilderness option until it revises the initial

land management plans, which is unlikely to be before 1998 for the majority of plans. Amendments to the initial plans would not trigger reconsideration of the wilderness option. The language in H.R. 148 also makes clear that areas not designated as wilderness need not be managed to protect their suitability for wilderness. It states that wilderness study in future generations of plans is required for only those lands that may be suited for wilderness at the time of implementation of the future plans. And it directs the Forest Service not to conduct any further statewide roadless area review and evaluation of Forest Service lands in the States of Michigan for the purpose of determining their suitability for inclusion in the wilderness system.

LEGISLATIVE HISTORY AND COMMITTEE CONSIDERATION

On April 10, 1987, S.1036, the Michigan Wilderness Act of 1987, was introduced by Senator Carl Levin and referred to the Committee. S. 1036 is substantively identical to S. 1767, on which the Committee held a public hearing on October 2, 1986. On April 8, 1987, the House passed H.R. 148, the Michigan Wilderness Heritage Act of 1987, which was subsequently referred to this Committee.

During the hearing on S. 1767, testimony was received from Senator Carl Levin, the sponsor of the bill, and Senator Donald Riegle, who stated his opposition to the bill. In addition, testimony was received from Representative Dale Kildee; Mr. Dale Robertson, Chief of the Forest Service; Mr. Gerald Derks, of Muskegon, MI; Mr. Michael Miller, representing the Independent Petroleum Association of America, Ms. Jane Elder, Midwestern Representative of the Sierra Club; and Mr. Michael Kellett, Michigan Representative of The Wilderness Society. Representative Kildee, Ms. Elder, and Mr. Kellett all testified in support of the bill. Mr. Robertson, speaking for the Administration, recommended enactment of the bill only if amended to delete wilderness recommendation for the Nordhouse Dunes area. Mr. Miller made the same recommendation. Mr. Derks voiced his concern that the rights of the owners of subsurface mineral rights underlying the Nordhouse Dunes area be protected.

On October 19, 1987, the Committee met in open business session. Chairman Leahy offered an amendment to strike the text of H.R. 148 and insert in lieu thereof the text of S. 1036. The amendment was agreed to, and the Committee then ordered H.R. 148, as amended, favorably reported to the Senate on a voice vote.

SECTION-BY-SECTION ANALYSIS OF H.R. 148

Section 1 provides that the bill may be cited as the "Michigan Wilderness Act of 1987".

Section 2 finds that the areas set forth in the bill are generally affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; have outstanding opportunites for primitive recreation or for solitude; and contain certain features of scientific, educational, and scenic value; and that Congress considers significant the assurances of the Governor of Michigan that he does not intend to seek more stringent air quality standards for areas designated wilderness by this Act.

Section 3 designates 9 wilderness areas totaling approximately 79,249 acres.

Section 4 provides that, as soon as practicable after the bill takes effect, the Secretary of Agriculture must file maps and legal descriptions of each wilderness area designated by the bill with the Senate Committee on Energy and Natural Resources and the House Committee on Interior and Insular Affairs. Each map and legal description will have the same force and effect as if included in the bill. However, corrections of clerical and typographical errors in the legal descriptions and maps may be made. Each map and legal description must be on file and available for public inspection in the office of the Forest Service, Department of Agriculture.

Section 5 provides that, subject to valid existing rights, each wilderness area designated by the bill will be administered by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act of 1964, except that any references in those provisions to the effective date of the Wilderness Act of 1964 will be deemed to be a reference to the effective date of the bill.

Section 6 contains the so-called "release/sufficiency" language described earlier in this report.

Section 6(a) finds that the Department of Agriculture has completed the second roadless area review and evaluation program (RARE II), and that Congress has made its own review and examination of National Forest System lands in the State of Michigan and of the environmental impacts associated with alternative allocations of such areas.

Section 6(b) states, in paragraph (1), that Congress has without passing on the question of the legal sufficiency of the RARE II final environmental impact statement for the National Forest System lands in the State of Michigan, that such statement shall not be subject to judicial review with respect to National Forest System lands the State of Michigan.

Paragraph (2) recognizes that the review of National Forest System lands in the State of Michigan by the Department of Agriculture in RARE II shall be deemed an adequate consideration of the suitability of such lands for wilderness with respect to the initial land management plans required under the National Forest Management Act of 1976. The Department of Agriculture will not be required to review the wilderness option prior to the revisions of the plans, but must review the wilderness option when the plans are revised.

Paragraph (3) states that areas in the State of Michigan reviewed in RARE II and not designated wilderness on enactment of this bill must be managed for multiple use in accordance with their respective land management plans. However, the areas need not be managed for the purpose of protecting their suitability for wilderness designation prior or during revision of the initial land management plans.

Paragraph (4) states that, in the event that revised land management plans are implemented, areas not recommended for wilderness designation need not be managed for the purpose of protecting their suitability for wilderness designation, and areas recommended for wilderness designation shall be managed for the purpose of

protecting their suitability for wilderness designation as may be required by the National Forest Management Act of 1976 and other applicable law.

Paragraph (5) states that, unless expressly authorized by Congress, the Department of Agriculture cannot conduct any further statewide roadless area review and evaluation of National Forest System lands in the State of Michigan for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System.

Section 6(c) states that, as used in section 6 of the bill, and as provided in the National Forest Management Act of 1976, the term "revision" will not include an amendment to a plan.

Section 6(d) provides that the provisions of section 6 of the bill will also apply to National Forest System roadless lands in the State of Michigan that are less than 5,000 acres in size.

Section 7 states that Congress does not intend that designation of wilderness areas in the State of Michigan lead to the creation of protective perimeters or buffer zones around each wilderness area; and that the fact that non-wilderness activities or uses can be seen or heard from areas within the wilderness will not, of itself, preclude such activites or uses, up to the boundary of the wilderness.

Section 8 states that, as provided in the Wilderness Act, nothing in the bill can be construed as affecting the jurisdiction or responsibilities of the State of Michigan with respect to wildlife and fish in the national forests in Michigan.

Section 9 states that, as provided in the Wilderness Act, owners of private lands within any area designated wilderness by the bill shall be assured the right of adequate access; and that no private lands within any area designated wilderness by the bill may be acquired without the consent of the landowner.

Section 10 states that, as provided in the Wilderness Act, the Secretary may take such measures as may be necessary to control fire, insects, and diseases within any area designated wilderness by the bill.

COST ESTIMATE

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee estimates that enactment of H.R. 148 will have no budgetary impact.

In accordance with the Congressional Budget Act of 1974, the Congressional Budget Office prepared the following cost estimate, which is consistent with the Committee's cost estimate.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 21, 1987.

Hon. PATRICK J. LEAHY,
Chairman, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 148, the Michigan Wilderness Act of 1987, as ordered reported by the Senate Committee on Agriculture, Nutrition, and Forestry, October 19, 1987.

The bill adds approximately 79,250 acres of National Forest System lands in Michigan to the national wilderness preservation system. Based on information from the National Forest Service, CBO estimates that additional costs to the federal government for surveying, planning and related activities necessary to implement the wilderness withdrawals will be approximately $700,000 over the five fiscal years beginning with 1988.

The National Wilderness Preservation Act stipulates that all timber located in units of the national wilderness preservation system be removed from the timber base of the national forest in which it is located. The areas affected by this bill are already excluded from the timber base, and no timber is currently being harvested on the lands designated by the bill. Therefore, no timber receipts would be lost from those designations.

Lands designated as wilderness are also withdrawn from mineral activity under the terms of the National Wilderness Preservation Act. No significant loss of mineral receipts is expected to result from this bill, however, because H.R. 148 provides that mineral resources can be removed under valid existing rights.

All roadless areas in national forests not designated as wilderness or expressly excluded from further review by an act of the Congress are currently being reevaluated for their suitability for inclusion in the national wilderness preservation system. H.R. 148 removes all these roadless areas in Michigan from this review for the period of the initial forest plans (10–15 years). However, because the Michigan review is complete, CBO expects no savings of land management planning costs as a result of this release. Nor does CBO project any significant increase in federal timber or mineral receipts from activity that would now be allowed on the released lands.

Enactment of this bill would not affect the budgets of state and local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

EDWARD M. GRAMLICH,
Acting Director.

REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee found that H.R. 148 is not a regulatory measure in the sense of imposing government established standards or economic responsibilities on private individuals or businesses. The bill is therefore expected to have no regulatory impact on any state or local government or on business.

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